



Suite 2200  
150 South Fifth Street  
Minneapolis, MN 55402

Allen Hinderaker  
612.371.5292  
ahinderaker@merchantgould.com

November 5, 2019

**VIA ECF**

Honorable Wilhelmina M. Wright  
United States District Court  
334 Federal Building  
316 N. Robert Street  
St. Paul, Minnesota 55101

**Re: *Fair Isaac Corp. v. Federal Insurance Co. et al.*,  
No. 16-cv-01054-WMW-DTS (D. Minn. filed April 21, 2016)**

Dear Judge Wright,

On behalf of Fair Isaac Corporation (FICO), I write to seek permission to bring to the Court's attention a recent United States Supreme Court decision, *WesternGeco LLC v. ION Geophysical Corp.*, 138 S. Ct. 2129 (2018), that is relevant to the Court's analysis of the Predicate Act Doctrine. The application of the Predicate Act Doctrine to FICO's damages flowing from the foreign exploitation of Federal Insurance Company's domestic infringing acts is challenged in Defendants Federal Insurance Company's and ACE American Insurance Company's Motion for Summary Judgment. (Dkt. 428). The Predicate Act Doctrine is also relevant to FICO's Objection to Order Granting Defendants' Motion to Amend (Dkt. 530), also pending before the Court.

Honorable Wilhelmina M. Wright  
November 5, 2019  
Page 2 of 2

The Predicate Act Doctrine permits the copyright owner to recover all damages flowing from the foreign exploitation of the infringer's domestic infringing acts. The doctrine has been adopted by the Second, Fourth, and Ninth Circuits. *Tire Eng'g & Distrib. v. Shandong Linglong Rubber*, 682 F.3d 292, 308 (4th Cir. 2012); *Los Angeles News Serv. v. Reuters TV Int'l*, 149 F.3d 987, 990-92 (9th Cir. 1998); *Sheldon v. Metro-Goldwyn Pictures Corp.*, 106 F.2d 45, 52 (2d Cir. 1939). No court has rejected the doctrine.

Defendants assert the Predicate Act Doctrine does not apply in this case because the Eighth Circuit has not addressed it. *See*, Defendants' Reply in Support of Motion for Summary Judgment, Dkt. 567 at 4-5; Defendants' Response to FICO's Objection, Dkt. 578 at 10-11.

FICO respectfully submits this recent Supreme Court decision will guide the Court's analysis of the Predicate Act Doctrine. FICO requests the Court's permission to supplement its briefing with a two-page letter that addresses the application of *WesternGeco* to this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Allen Hinderaker", with a stylized flourish at the end.

Allen Hinderaker

AWH:can  
cc: All Counsel of Record (Via ECF)